

✓ B (wo) Case 3:06-c
ORIGINAL

NORTHERN DISTRICT OF TEXAS
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS **FILED**
DALLAS DIVISION PM 4:21

WILLIAM J. USITALO,

Plaintiff

vs.

**JAMES R. EDDINGS and,
GALT MEDICAL CORP.**

Defendant

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS DISTRICT OF TEXAS VISION PH 4: 21 CLERK OF COURT § § § § § § § Civil Action No.	FILED <div style="border: 1px solid black; padding: 10px; width: fit-content; margin: auto;"> OCT 9 2006 </div> CLERK, U.S. DISTRICT COURT By _____ Deputy
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306 - CV-1840B

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, WILLIAM J. USITALO, hereinafter called Plaintiff, and files this his Original Complaint, complaining of JAMES R. EDDINGS (“Eddings”) and GALT MEDICAL, CORP., a Texas corporation (“Galt”), hereinafter together called Defendants and for his causes of action would show the Court as follows;

Parties

1. Plaintiff is an individual who resides at 2540 Kings Gate Drive, Carrollton, Texas 75006.
 2. Defendant JAMES R. EDDINGS is an individual who may be served with process at 2220 Merritt Dr., Garland, Texas 75041-6146.
 3. Defendant GALT MEDICAL CORP. is a Texas corporation who may be served through its President JAMES R. EDDINGS at 2220 Merritt Dr., Garland, Texas 75041-6146.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this action under 17 C.F.R. §240.10b-5 as further asserted in the body of these pleadings. Plaintiff asserts that he was the victim of a

device, scheme or artifice to defraud or other violation of said statute arising out of a joint venture of Plaintiff and Eddings in early 1990 commenced with a telephone call from Eddings and letters sent through the U.S. mail at that time whereby Eddings and Plaintiff started their joint venture which continued up until the time in 1996 when Plaintiff received an option (the "Option") for the purchase of stock of Galt, i.e., a security under 17 C F R §240.10b-5 of the United States Code, and until August 2, 2006 when Galt and Eddings refused to honor the Option.

All parties reside or conduct business in Dallas County, Texas. This Court has personal jurisdiction over Defendants and venue is proper in this Court under 28 U.S.C. § 1391(b). The Court has supplemental or pendent jurisdiction under 28 U.S.C. §1337 over Plaintiff's claims made herein under state and common law because the claims are so related to the claims within the Court's original jurisdiction that they form part of the same case or controversy under Article II of the United States Constitution.

Factual Background

5. In 1990 Eddings approached Plaintiff and asked him to join him as a principal in a joint venture for the purpose of starting up a new medical device company. In furtherance of the joint venture on or about March 22, 1990 Plaintiff provided a quote to Eddings for four coil winding machines of a type which he had previously designed and manufactured with a cash price plus a stock share proposal in the company to be formed. On or about April 30, 1990 Eddings presented a counter proposal at a much lower price with options of taking the price of the machinery in cash or stock and Eddings said "I am confident that the ultimate value to you by our current and continuing relationship under my proposal will be much greater than you can

imagine". The company which was formed in February 1991 by Eddings was named Galt Medical Corp. Plaintiff did work for Eddings as an independent contractor in the joint venture prior to Galt's formation and thereafter at all times relying on the fairness and honesty of Eddings in rewarding Plaintiff as promised with equity in Galt. However, later in 1991 Eddings puts that work on hold pending the raising of additional capital for Galt.

In 1995 Plaintiff continued his joint venture with Eddings and Galt doing some work for Galt as an independent contractor. In early 1996 Galt acting through Eddings, who is the sole director and officer of Galt at all times relevant hereto, approaches Plaintiff and hires Plaintiff as an employee of Galt. In consideration of Plaintiff taking a much reduced salary Galt also gave to Plaintiff annual options for the purchase of stock of Galt at \$1.00 per share plus the Option for another 20,000 shares at an exercise price of \$2.00 per share to be triggered when the Galt shares would be sold. Eddings represented and promised to Plaintiff that he would be able to pay the exercise price of the Option and sell said shares and profit from the sale along with all other stock holders of Galt at the time of sale of the shares. There was never any discussion that the stock Option had any termination date and the total agreed consideration for the Option was paid when Plaintiff accepted his employment and the Option was thereby fully vested. Eddings from the start of the joint venture with Plaintiff had said that he had given others similar options in another company he had formed and sold and that those persons had become rich people in that manner.

Plaintiff would show this Court that in furtherance of the transactions Eddings contacted Plaintiff by phone and thereafter on one or more other occasions to arrange meetings to discuss the commencement of the joint ventures in which he made fraudulent representations to Plaintiff.

In addition Plaintiff's employment and activities in furtherance of the transactions involved the design and manufacturing of equipment sold by Galt in interstate commerce and the transactions and ownership of the Option was related to stock in a company involved in interstate commerce.

Galt from the date of its formation until August 2, 2006 and maybe thereafter was always operated as the alter ego of Eddings. No shareholder meetings were ever noticed or held and no financial information on Galt was ever delivered to any shareholder annually as required by law. All decisions concerning issuance of shares and options from time to time were made solely by Eddings without any advice to existing shareholders as a group, Eddings never sought or obtained approval of his actions and decisions by shareholders, continuing up unto and including the time of the sale of all Galt shares and derivative rights including phantom shares and option shares on August 2, 2006. In fact in months leading up to the closing Eddings and Galt continued to defraud and deceive and lead Plaintiff on by suggesting and alluding to him that his shares would be increased to recognize his contributions made to the joint ventures. In fact, as shown by his deceit, Eddings never had any intention of delivering on these promises, though he was in total control at all times of that decision, as always. This was likely done as Eddings wanted Plaintiff to continue to work for Galt in accomplishing unique work and services leading up to the closing including the moving of the Galt offices and manufacturing facilities.

On August 2, 2006 Galt's stock and certain derivative type equities were sold to a publicly traded company, Theragenics Corporation, for a considerable profit for all stock holders and holders of derivative rights. The value of the 20,000 shares of Plaintiff at the time of the sale, less the purchase price of \$2.00 per share, would have netted Plaintiff approximately \$150,000.00 if his Option had been honored. Plaintiff demanded the Option be honored and

Defendants asserted and still assert, despite Plaintiff's demands, that the Option terminated on or about October 10, 2002 and that Plaintiff's rights to the shares then expired. Plaintiff denies that Galt could terminate the Option on October 10, 2002 and would show that if he had been told that there was an expiration on the stock Option or any right to vary it's original terms that he would not have agreed to a lesser salary than he was entitled to in 1996 and up to and through his employment that ended on or about October 10, 2001, all to his damage in the sum of at least \$150,000.00 of lost salary. At all times since the Option was given to Plaintiff in 1996 it was fully vested and non-revocable by it's terms and not required to be exercised except on the sale of the shares of Galt closed on August 2, 2006. Plaintiff did not suffer any damages from the ultimate denial of exercise of the fully vested Option he received in 1996 until August 2, 2006.

Causes of Action

6. 10b-5 Violations; Plaintiff would show that the stock Option promised to Plaintiff as part of his employment package in 1996 was a security and that Defendants' actions in denying him his pay, which included the benefits of the stock Option, is a violation of Rule 10b-5 (17 C.F.R. §240.10b-5). Defendants actions constitute a device, scheme or artifice to defraud Plaintiff who relied thereon and the making of untrue statements of material facts or the omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading and the act, practice, or course of business which Defendants employed in its operations would operate as a fraud or deceit upon any person. Plaintiff would show that Defendants used an instrumentality of interstate commerce or the mails in carrying out the violations of 10b-5 asserted herein. Plaintiff would show that these actions were done knowingly and intentionally to benefit Defendant Eddings and

his family and friends and his family limited partnership, Kiam Enterprises, each of who profited in the tens of millions of dollars from the sale of Galt shares after unfairly using Plaintiff's skills and work products under false promises and deceit related to the Option and other transactions of Galt as the alter ego of Eddings.

7. Common Law Fraud; Plaintiff would show that the actions of the Defendants also constituted common law fraud and he incorporates all of the above pleadings and assertions in bringing this cause of action. Defendants promised and represented to Plaintiff that he would be entitled to 20,000 shares of Galt Medical Corp. at an Option exercise price of \$2.00 per share upon the sale of Galt shares to any third party. This Option was given as salary and compensation in exchange for Plaintiff's agreement to accept lesser cash salary he otherwise would have been entitled to and would have charged for his services in 1996. Plaintiff relied on these promises and representations of the Defendants to his detriment and damage in the sums set out above.

8. Breach of Duty of Good Faith and Fair Dealing; Plaintiff would show that through their dealings with one another the Plaintiff and Defendants developed a special relationship that was more than a mere employer/employee relationship. Plaintiff was induced by the Defendants to trust Eddings and to rely on his friendship and his honor and his business expertise to follow through with the oral promises and representations which induced Plaintiff to work for a sum of money far below what would have been his normal salary and compensation for years. Defendants' failure to honor the Option and his attempt to declare that the Option was terminated before the sale of Galt shares was a breach of said duty of good faith and fair dealing for which Plaintiff seeks recovery in the sums set out above.

9. Breach of Fiduciary Duty; Plaintiff would show that through his association with the Defendants and the subsequent agreements to share profits based on stock ownership in the place of salary, that a fiduciary relationship developed and existed between the Plaintiff and Defendants. Plaintiff would show that the Defendants breached their fiduciary duties owed to Plaintiff by failing to follow through with their promises and representations and by taking advantage of Plaintiffs inferior bargaining position and knowledge of the inner workings of Galt concerning agreements for stock purchases and transfers. Defendants owed a duty of full disclosure to Plaintiff which they breached and a duty to properly evidence Plaintiff's rights to the 20,000 shares on the books and records of the corporation, all to Plaintiffs damage as set out above.

10. Breach of Contract; In the alternative, Plaintiff would show that Defendant Galt has breached its contract with Plaintiff by failing to honor Plaintiff's Option rights.

11. Attorney's Fees; Plaintiff would show that he is entitled to Attorney's fees herein through each stage of these proceedings.

12. Exemplary Damages; Plaintiff would show that he is entitled to exemplary damages herein because the actions of the Defendants were done intentionally, with malice and fraud.

13. Demand for Jury Trial; Plaintiff demands a jury trial.

14. Demand for All Other Relief; Plaintiff demands all other relief in law and in equity to which he is entitled.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear herein and upon trial that he have judgement as follows;

1. Actual damages
2. Attorney's fees

3. Exemplary damages
4. Pre and Post Judgment interest
5. Costs of Court
6. Such other remedies available to Plaintiff at law or in equity.

Respectfully submitted,

THE ROBINSON LAW FIRM

2704 Sherrill Park Ct.
Richardson, Texas 75082
972.918.0007 Office
972.918.9995 Fax



MICHAEL E. ROBINSON
Texas State Bar No. 17102700

JS 44
(Rev. 3/98)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

William J. Usitalo

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

Dallas

DEFENDANTSJames R. Redding &
Galt Medical Corp.

OCT

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)900 LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**Michael E. Robinson
2704 Sherrill Park Ct
Richardson, TX 75082
972-918-0007**ATTORNEYS (IF KNOWN)**

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II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | PTF | DEF | |
|---|----------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury — Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury — Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine			<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 510 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 550 Securities/Commodities/Exchange
<input type="checkbox"/> 158 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 575 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS:	<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 896 HIA (1385f)	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 897 Black Lung (923)	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 898 DWWC/DWW (405(g))	<input type="checkbox"/> 899 Other Statutory Actions
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 899 SSID Title XVI	
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 900 Other Labor Litigation	
			<input type="checkbox"/> 740 Railway Labor Act	
			<input type="checkbox"/> 790 Other Labor Litigation	
			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS — Third Party 26 USC 7809	
FEDERAL TAX SUITS				

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Magistrate Judgment |
|---|---|--|---|--|---|--|

Appeal to District Judge from

Appeal to District Judge from

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE.
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

17.CFR 240.106-5 Fraud in Securities Transaction

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION **DEMAND \$** **CHECK YES only if demanded in complaint:**
 UNDER F.R.C.P. 23 **JURY DEMAND:** YES NO

VIII. RELATED CASE(S) (See instructions): **IF ANY** **JUDGE** **DOCKET NUMBER**

DATE **SIGNATURE OF ATTORNEY OF RECORD**

10/09/06

Signature

Michael E. Robinson

FOR OFFICE USE ONLY

RECEIPT # **AMOUNT** **APPLYING IFF** **JUDGE** **MAG. JUDGE**